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IT-6
Battal
PATENT APPLICATION
ATTORNEY DOCKET NO. 10991401-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Peter J. Lange et al.

Serial No.: 09/552,060

Examiner: Matthew Luu

Filing Date: 4/19/2000

Group Art Unit: 2672

Title: A constant size image display independent of screen resolution

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APR 01 2003

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BRIEF ON APPEAL

INTRODUCTION

Pursuant to the provisions of 37 CFR § 1.191 *et seq.*, applicants hereby appeal to the Board of Patent Appeals and Interferences (the “Board”) from the examiner’s final rejection dated 1/29/2003. A notice of appeal was sent on the same day as this brief on appeal. This brief on appeal is being filed in triplicate (37 CFR § 1.192(a)) and is accompanied by the requisite fee (37 CFR 1.192(a) and 1.17(f)).

REAL PARTY IN INTEREST

The entire interest in the present application has been assigned to Hewlett-Packard Company as recorded at Reel 011009, Frame 0177

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RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1, 6, 7, and 8 are pending.

Claims 1, 6, 7, and 8 have been finally rejected.

Claims 1, 7, and 8 are on appeal.

STATUS OF AMENDMENTS

There are no pending amendments.

SUMMARY OF INVENTION

The present invention is a method and apparatus for displaying images on web pages at a constant size or at a constant proportion of the screen size, independent of screen resolution and independent of physical screen size. A Java applet can be embedded into the HTML description of the page to be displayed. A Java applet is like a program. When a web browser is reading an HTML description of a page and encounters a Java applet, program control is passed to the Java applet. The Java applet executes and then passes program control back to the web browser. Java applets have visibility of the display driver. This allows Java applet to determine the current settings of the display driver (page 4 lines 24 – 25 and page 5, lines 1-4).

The Java applet retrieves the physical display size (102), then reads the image

resolution (104). The applet then gets the current settings of the display driver (106). Using the information from the previous steps the applet calculates the physical size of the image (108) and the physical resolution of the screen (110). Using the display attributes and the desired image size, the correct scaling for the image to be displayed can be calculated (112). The Java applet can then display the image at the correct size (114).

In the actual operation of the invention the physical height and width of the screen would be input by the user and stored in a file at a known location. If the Java applet did not detect the file the applet would ask the user for this information and then store the physical size and width at the known location (page 5 lines 18-24).

ISSUES

1. Whether claims 1, 7, and 8 are unpatentable under 35 U.S.C. § 103(a) over Moore et al. (US Patent 6,310,601) in view of Harter et al. (US Patent 6,212,564).

GROUPING OF CLAIMS

For the purpose of this appeal all the claims stand or fall together as discussed in the following argument section.

ARGUMENT

OUTLINE

- I. Summary of the brief on appeal.
- II. Summary of the requirements for *prima facie* obviousness.
- III. Claims 1, 7, and 8 rejection.

I. Summary of the brief on appeal

- A. The 35 U.S.C. § 103(a) rejection of claims 1, 7, and 8 is improper because a *prima facie* case for obviousness has not been established, for the following reasons: (1) the cited art does not teach or suggest every element of the claim, (2) the examiner incorrectly characterizes the cited art.

II. Summary of the requirements for *prima facie* obviousness.

MPEP 2143.03

The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim dependent therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

MPEP 2142.

“To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.” “The teaching or suggestion to make the claimed combination... must both be found in the prior art, and not based on applicant’s disclosure.” *In re Vaeck*, 947 F.2ed 488, 20 USPQ2ed 1438 (Fed. Cir. 1991). “The level of skill in the art cannot be relied upon to

provide the suggestion to combine references." *Al-Site corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination" *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

OTHER RELEVANT CASE LAW

"Factors including unexpected results, new features, solution of a different problem, novel properties, are all considerations in the determination of obviousness in terms of 35 U.S.C. § 103. When such factors are described in the specification they are weighed in determining, in the first instance, whether the prior art presents a prima facie case of obviousness." *In re Wright*, 6 U.S.P.Q.2d 1959, 1962 (Fed. Cir. 1988).

III. Claims 1, 7 and 8 rejection.

Claims 1, 7 and 8 stand rejected under 35 USC § 103(a) as being unpatentable over Moore et al. (US Patent 6,310,601) in view of Harter et al. (US Patent 6,212,564).

Claim 1 and 7 require that an embedded program in a web page "determines the physical size of the display". The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). The prior art cited does not teach determining the physical size of the display. Harter does disclose determining the screen resolution, the image color and depth, but does not disclose determining the physical size of the display. The examiner states that it would have been obvious to determine the physical size of the display once the screen resolution has been determined because "the resolution of the display is directly proportional to the physical size of the display" (page 3 of the response mailed 1/29/03). This is clearly a mischaracterization of the prior art. The resolution of a display is independent of the physical size of the display. The same display can be used at many different resolutions, for example 640 by 480, and 1024 x 1280. Both of these display

modes use different screen resolutions for the same physical monitor. The resolution of the display is independent of the physical size of the display. Therefore the examiner has not met his initial burden of proof and has not established a *prima facie* case of obviousness.

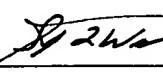
Claims 1 and 8 also require "determining the physical size of the image to be displayed" and "displaying the image at the desired physical size". None of the cited prior art discloses or teach determining the physical size of the image to be displayed or displaying an image at a desired physical size. The examiner has claimed that the cited art (Figure 3, steps 305 – 309 of Moore) determines the physical size of the image. However, the cited areas do not teach determining the physical size of the image. The HTML size directive that the examiner points to describes the image as a number of pixels in height and width (column 4, lines 26-30). The number of pixels used in a display is variable and changes with the resolution of the display driver. Therefore the size directives don't determine the physical size of the image. Even knowing the resolution of the display is not enough to determine the physical size of the image. You also have to know the physical size of the display. For example, if you display the same image on a 17 inch monitor and a 15 inch monitor, both displays using the same resolution, the physical size of the image on the 15 inch monitor will be smaller. The current invention takes into account the physical sizes of the displays, and displays the image at the same physical size on different sized monitors. The examiner has not met his initial burden of proof and has not established a *prima facie* case of obviousness. Therefore the claims should be allowed as written.

Conclusion

In view of the above, applicant respectfully request that the examiner's rejection of claims 1, 7, and 8 be reversed.

Respectfully submitted,

By


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APPENDIX I
CLAIMS CURRENTLY PENDING

1. (Amended once) A method of displaying an image in a web page, comprising the steps

of:

embedding a program in the web page that, when launched, determines the physical size of the display and the current resolution of the display;

determining the desired physical size of the image to be displayed;

displaying the image at the desired physical size.

6. A web page comprising:

an embedded program launched when the web page is read, the embedded program configured to determine the current display resolution for a display used to display the web page.

7. The web page of claim 6 where the embedded program also determines the physical size of the display.

8. The web page of claim 7 further comprising:

at least one image to be displayed by the web page, the image having a desired physical size, whereby the image is displayed at the desired physical size of the image by scaling the image to compensate for the current display resolution and the physical size of the display.